
From: Evans, Karen <karen.evans@nortonrosefulbright.com>
Sent: Thursday, April 22, 2021 6:51 PM
To: patent-evaluation@amazon.com
Cc: zac@cambridgelegalcolorado.com; sudick@raklaw.com; mfenster@raklaw.com; rmirzaie@raklaw.com; ahayden@raklaw.com; rgajarsa@raklaw.com; greg.sobolski@lw.com; bdavis@davisfirm.com; churt@davisfirm.com
Subject: ThermoLife/HumanN - Case ID 8150059851
Attachments: 2021.04.23 Amazon Correspondence.pdf

Please see the attached correspondence.

Thank you,

Karen Evans | Practice Coordinator to Jon Skidmore, Brett Govett, Doug Wabner,
Brandy Nolan, Kyle Schindler, Marwan Elrakabawy and Hannah Putnam
Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States
Tel +1 214 855 8379 | Fax +1 214 855 8200
karen.evans@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

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**VIA Certified Mail
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Amazon.com, Inc.
Legal Department
2021 7th Avenue
Seattle, Washington 98121
patent-evaluation@amazon.com

Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600
Dallas, Texas 75201-7932
United States

Direct line +1 214 855 8118
brett.govett@nortonrosefulbright.com

Tel +1 214 855 8000
Fax +1 214 855 8200
nortonrosefulbright.com

**Re: ThermoLife International, LLC's Request To Initiate Utility Patent Neutral Evaluation Procedure Against HumanN With Respect To U.S. Patent No. 10,555,968;
Case ID 8150059851**

Dear Amazon:

We are in receipt of Amazon's April 2, 2021 communication notifying HumanN of ThermoLife International, LLC's ("ThermoLife") initiation of Amazon's Utility Patent Neutral Evaluation Procedure against HumanN. Because the parties are currently engaged in ongoing litigation concerning the same products and patent claim at issue in the above-captioned Patent Evaluation Process, and because a United States District Judge has temporarily restrained ThermoLife from pursuing this proceeding with Amazon, HumanN respectfully requests that Amazon decline to proceed with ThermoLife's requested Patent Evaluation.

On February 11, 2021, ThermoLife filed a patent infringement suit against HumanN in the United States District Court for the Western District of Texas, Case No. 6:21-cv-00144-ADA, alleging, in relevant part, that HumanN's SuperBeets and BeetElite products—including those offered for sale on Amazon.com— infringe claim 45 of U.S. Patent No. 10,555,968 ("the '968 Patent"). *See* Complaint, Dkt. 1, at 4, 17-21, attached hereto as Exhibit A. That litigation before U.S. District Judge Alan D. Albright is ongoing.

Two months after filing the lawsuit, ThermoLife requested that Amazon institute the above-captioned Patent Evaluation Process against HumanN, asserting that HumanN's SuperBeets and BeetElite products sold on Amazon.com infringe claim 45 of the '968 Patent. As explained above, however, the same infringement claim is at issue in the Western District of Texas suit.

Because ThermoLife has asserted the same infringement claims and seeks essentially the same relief through both actions, HumanN applied for and Judge Albright granted a temporary restraining order that prohibits ThermoLife from taking any action to further pursue evaluation through Amazon's Patent Evaluation Process. *See* Order, Dkt. 33, at 1, attached hereto as Exhibit B. The Court issued this order because it found "a substantial risk of irreparable harm to

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HumanN and to the jurisdiction of [the] Court, if ThermoLife were to attempt to enforce or further pursue extrajudicial review of patent infringement claims relating to the products already accused of infringement in [the] litigation.” *Id.* at 1. This Order will remain in place until the court hears argument on and issues a preliminary injunction that would prohibit ThermoLife from further pursuing evaluation of its infringement claims through Amazon’s Patent Evaluation Process during the pendency of the litigation. *Id.* at 2. A Preliminary Injunction Hearing is set for April 30, 2021.

In light of this Order, and Amazon’s recognition that its patent evaluation process should not be initiated or should be suspended where infringement claims are already the subject of litigation, HumanN requests that Amazon decline to proceed with evaluation of ThermoLife’s patent infringement claims. *See* Amazon Patent Neutral Evaluation Procedure, at 1 (stating that, where “there is litigation pending on a patent subject to a proposed or pending Evaluation, Amazon may decide not to initiate or suspend an Evaluation until the completion of that litigation”).

For the reasons explained in this letter, HumanN requests that Amazon decline to proceed with ThermoLife’s requested Patent Evaluation Process during the pendency of the patent infringement suit before the United States District Court for the Western District of Texas, Case No. 6:21-cv-00144-ADA. If, however, Amazon elects to proceed with the above-captioned Patent Evaluation Process, HumanN will agree to participate in the process to defend its products because not doing so presents a risk of substantial and irreparable harm to HumanN. Thank you for your attention to this important matter.

Respectfully submitted,



Brett C. Govett

BCG

Attachments/Enclosures

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 NORTON ROSE FULBRIGHT

CC: Zachary C. Garthe
Cambridge Law
4610 S. Ulster St., Suite 150
Denver, CO 80237
zac@cambridgelawcolorado.com

Steve Udick
Russ, August & Kabat
5570 FM 423, Suite 250-2069
Frisco, Texas 75034
sudick@raklaw.com

Marc A. Fenster
Amy Mirzaie
Amy E. Hayden
Russ, August & Kabat
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
mfenster@raklaw.com
rmirzaie@raklaw.com
ahayden@raklaw.com

Robert J. Gajarsa
Russ, August & Kabat
800 Maine Avenue SW, Suite 200
Washington, DC 20004
rgajarsa@raklaw.com

Gregory K. Sobolski
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111
greg.sobolski@lw.com

William E. Davis, III
Christian J. Hunt
The Davis Firm, PC
213 N. Fredonia Street, Suite 230
Longview, Texas 75601
bdavis@davisfirm.com
churt@davisfirm.com

Attorneys for ThermoLife International, LLC